

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

DANIELA QUIROZ and
GILBERT HERNANDEZ, *on behalf of
themselves and others similarly situated,*

Plaintiffs,

v.

APPLE & EVE, LLC,

Defendant.

Civil Action No. 2:18-cv-00401 (SJF)(ARL)

**NOTICE OF MOTION FOR
PARTIAL DISMISSAL OF
THE AMENDED COMPLAINT**

TO: LEE LITIGATION GROUP PLLC

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PLEASE TAKE NOTICE that, in reliance upon Defendant's Memorandum in Support of Motion for Partial Dismissal of Plaintiffs' Amended Complaint, the Amended Complaint (ECF No. 7) and all the pleadings and proceedings filed herein, Defendant Apple & Eve, LLC, by their attorneys, will move this Court before the Hon. Sandra J. Feuerstein, in the United States District Court for the Eastern District of New York, Central Islip Courthouse, 100 Federal Plaza, Courtroom 1010, Central Islip, N.Y. 11722, for an order dismissing the Amended Complaint (ECF No. 7) pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure on the grounds that: (i) the Court lacks subject matter jurisdiction with respect to (a) Count I and paragraph (f) of the *ad damnum* clause of the Amended Complaint because plaintiffs lack standing to seek injunctive relief, and (b) Counts I, II, III and VII to the extent these Counts are

brought under state laws other than New York or California, because plaintiffs lack standing to sue under any state law other than New York or California; and (ii) the Amended Complaint fails to state a claim upon which relief can be granted because (a) Count I for injunctive relief is a remedy, not an independent cause of action; and (b) plaintiffs fail to allege that they have provided written notice to defendant prior to commencing this action as required under California's Consumer Legal Remedies Act; and (iii) granting such other relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, in accordance with Local Rule 6.1(b)(2) and (3), and Rule 4(F) of the Individual Rules of the Hon. Sandra J. Feuerstein, answering papers, if any, shall be served within fourteen days after service of the moving papers, and any reply affidavits and memoranda of law shall be served within seven days after service of the answering papers.

Dated: New York, NY
April 18, 2018

Respectfully submitted,

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